

MARGARET C. HOSE

IBLA 75-210

Decided April 7, 1975

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas leases W-36392 and W-38111.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated when the lessee shows that the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Harry B. Durham III, Esq., Brown, Drew, Apostolos, Barton & Massey, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Margaret C. Hose has appealed from two identical decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated October 16, 1974, which rejected her petition for reinstatement of oil and gas leases W-36392 and W-38111. The leases had expired by operation of law for failure to pay the advance rentals on or before the anniversary dates as provided in 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a). The anniversary date for both payments was October 1, but payment was not received by the Cheyenne land office until the next day, October 2, 1974.

The facts leading up to the receipt of payment are as follows. The rental check for the two payments is dated September 23, 1974, and was mailed from Springfield, Illinois, via airmail in an envelope postmarked September 23, 1974, eight days prior to the due date. The envelope was incorrectly addressed to:

Bureau of Land Management
Post Office Box 1828
Denver, Colorado 82001

We note that the post office box number and the zip code were correct with respect to the proper Cheyenne, Wyoming address. See discussion, infra. The letter was sent to Denver, Colorado, and was returned to appellant on September 30, 1974, marked "addressee unknown." On that same day, appellant's secretary phoned the Wyoming State Office to relay the circumstances regarding the rental payment. She was advised that "if she wanted to petition for reinstatement, to send the check to this office and the reinstatement would be accepted or denied on the basis of the facts presented." (State Office decision). It appears that neither appellant nor the State Office considered the possibility of telegraphing the payment in on time. On September 30, the check dated September 23, 1974, along with the incorrectly addressed envelope were transmitted via airmail to the:

Bureau of Land Management
Oil and Gas Division
Post Office Box 1828
Cheyenne, Wyoming 82001

The second envelope was postmarked September 30, and as stated above, was not received by the State Office until October 2, 1974.

The State Office decision, relying on Louis Samuel, 8 IBLA 268 (1972), held that:

"[R]easonable diligence" in transmitting timely a rental payment for an oil and gas lease is interpreted as meaning posting the payment through the United States mail at no later date than that on which letters mailed thereon would, despite normal delays in the collection, transmittal and delivery of mail, be delivered to the appropriate land office on or before the due date of the rental. (Emphasis in decision).

The State Office then held that appellant's handling of the matter did not constitute reasonable diligence as defined above.

[1] An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR

3108.2-1(c); Louis Samuel, supra. In her Statement of Reasons on Appeal, appellant urges that the delay in receipt of the rentals was not due to a lack of reasonable diligence on the part of the lessee, and requests reinstatement on the basis of earlier Board decisions.

To begin with, we reject appellant's argument that the present case is similar to the situations presented in R. G. Price, 8 IBLA 290 (1972). Appellant argues that in both cases the rentals were mailed before the due date and arrived only one day late. The situations referred to in the Price decision were instances where the payments were postmarked a number of days prior to the due date, but were received one day late. The Board held that the payments were mailed in sufficient time to arrive on the date due, but for unexplained reasons they were not received until after that date. In the present case, the second letter was mailed from Springfield, Illinois, only one day before the date due, a period not sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of payment, considering, among other things, the distance involved. See W. E. Hester, Jr., 18 IBLA 420 (1975).

Appellant further urges that the legislative history of the reinstatement provisions supports her position and notes that Representative Wayne Aspinall of Colorado, Chairman of the House Committee on Interior and Insular Affairs, stated on the floor of the House that due to the strict interpretation given section 188 by the Department,

* * * each year numerous private relief bills are introduced. The majority of these * * * warrant relief. As I recall, we have brought bills before this body where the rental was short 15 cents. * * * In other situations the rental was mailed in ample time but the letter was misdirected to the wrong office. These are some of the situations that this proposed bill would eliminate. [1/] (Emphasis in appellant's brief.)

We note that Representative Aspinall's reference to "misdirected" is ambiguous, namely, it is not clear whether he is referring to misdirection by the post office, the lessee or by both. The Board concludes that adequate tender of payment requires that a letter be properly addressed. Accordingly, we hold that proper construction of the term "misdirected" excuses late payment only in instances where the error rests with the post office, and not the inadvertence of the lessee.

1/ 116 Cong. Rec. H-3253 (daily ed. Apr. 20, 1970).

The Board, however, finds appellant's other arguments compelling with regard to favorable consideration of her petition for reinstatement of the leases. The case at hand is strikingly similar to the situation presented in James E. Fowler, 8 IBLA 372 (1972). In the Fowler case, the appellants argued that their late payments were caused by typographical errors in addressing the original envelopes. Appellants were instructed by the BLM to furnish the original envelopes to the State Office, but they responded that compliance with the request would be impossible as the envelopes had not been kept. One appellant stated that:

The envelope was addressed as usual except the typist mistake Silver Springs [sic], Mississippi, instead of Silver Springs, Maryland.

The Board denied the petitions for reinstatement on the grounds that we had only the bare assertion that the rentals were mailed timely, unsupported by any evidence. In a footnote, we noted that although the State Office decision required that the misaddressed envelope be submitted, any credible evidence in support of the allegation would have been considered. Id. at 374. See also A. O. Holley, 14 IBLA 264, 267 (1974).

At the outset we stress that in Fowler the Board simply held that consideration Would be given to petitions for reinstatement in instances where credible evidence was submitted supporting the alleged grounds for delay due to misdirection. We did not hold that under such circumstances all requests for reinstatement would be granted. The facts in each case still require review to determine whether the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

Part of appellant's arguments simply point to the fact that the delayed payment was partially caused by the negligence or inadvertence of appellant's agent in misaddressing the original envelope. Such an error does not constitute justifiable delay. Louis Samuel, supra at 274. Upon inquiry to the United States Postal Service, Washington, D.C., we were informed that when there exists a conflict between a written address and a zip code, the zip code would take precedence as most metropolitan post offices are now equipped with machines which direct mail solely upon the basis of zip codes. In the present case, appellant's initial letter was properly zip-coded (and also had the correct addressee and post office box number). Presumably, the letter was personally handled and the zip code ignored. Under these circumstances, the Board concludes that but for the postal service's disregard of the zip code, appellant's payment would have arrived in the proper land office on or prior

to the due date. Upon return of her letter, appellant promptly mailed the rental payment to Cheyenne. Therefore, we conclude that appellant has met the reasonable diligence standard despite the initial misdirection error. Cf. R. G. Price, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Martin Ritvo
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

